

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

3 DR. ALAN SACERDOTE, DR. HERBERT)
4 SAMUELS, MARK CRISPIN MILLER,)
5 PATRICK LAMSON-HALL, MARIE E.)
6 MONACO, DR. HULAMITH LALA)
7 STRAUSSNER, and JAMES B. BROWN,)
8 individually and as)
9 representatives of a class of)
10 participants and beneficiaries on)
11 behalf of the NYU School of)
12 Medicine Retirement Plan for)
13 Members of the Faculty,)
14 Professional Research Staff and)
15 Administration, and the New York)
16 University Retirement Plan for)
17 Members of the Faculty,)
18 Professional Research Staff and)
19 Administration,)
20 Plaintiffs,)
21 -vs-) Civil Action No.
22 NEW YORK UNIVERSITY,) 1:16-cv-6284-KBF
23 Defendant.)
24)
25)
26)

18 The videotaped deposition of
19 DANIEL FISCHEL called as a witness for
examination, taken pursuant to the Federal Rules
of Civil Procedure of the United States District
Courts pertaining to the taking of depositions,
taken before MICHELLE M. YOHLER, a Certified
20 Shorthand Reporter of the State of Illinois,
CSR No. 84-4531, at Suite 1300, 332 South
Michigan Avenue, Chicago, Illinois, on 1st day
21 of March, 2018 at 9:09 a.m.
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1 Law and Business at the University of Chicago
2 Emeritus.

3 Q. So are you the -- you have an equity
4 position in Compass Lexecon, I take it?

5 A. No, I don't. There are no equity
6 positions.

7 Q. So what is the ownership structure?

8 A. We are owned by a publicly traded
9 company by the name of FTI Consulting.

10 Q. So you are on a salary, or do you --
11 is your income dependent on whatever expert
12 services you provide?

13 A. It's a function of the work that I
14 do, particularly the hours that I work and the
15 overall profitability of the firm.

16 Q. So you have a stake in the
17 profitability of Compass Lexecon, correct?

18 A. I wouldn't call it a stake. I mean,
19 there's a negotiated outcome. I guess there's
20 some formula in terms of the relationship
21 between Compass Lexecon and the parent in terms
22 of how income for profits are split. And then
23 internally, as I said, it's a negotiation.

24 Q. What's your hourly rate?

1 A. Currently it's \$1,500 an hour.

2 Q. And of that \$1,500 per hour, how much
3 do you get personally?

4 A. Assuming the firm is doing well, all
5 of it.

6 Q. And then do you get additional
7 money -- you said you have some basis for
8 receiving money from profits in addition?

9 A. Yes, at the end of the year, there's
10 an allocation that's agreed upon, what we call
11 the bonus bowl, of how things are going to be
12 split in the -- the following year.

13 Or sometimes we -- it's very
14 informal. Sometimes we reach agreements for
15 multiple years, which sometimes we vary,
16 sometimes we don't.

17 Q. How much have you billed in this
18 case?

19 A. Personally?

20 Q. Well, personally and then how much
21 has the firm billed separate from your own
22 billing?

23 A. You know, I actually don't know the
24 answer to that. I don't send out the bills, so,

1 again, I don't know.

2 So in terms of my own work, I put in
3 a fair amount of time in this case, so I'd say,
4 through today, maybe somewhere between 75 and
5 100 hours.

6 Q. So 100 hours would be \$150,000,
7 right?

8 A. Yeah, I mean, all of it hasn't been
9 billed yet, but I would expect to get all of my
10 hourly rate.

11 Q. From providing expert services
12 annually, apart from other income, how much
13 money have you been making annually from expert
14 services, providing expert-witness service?

15 A. You know, outside the compensation
16 that I've gotten from this case, I'm not going
17 to answer that question.

18 Q. Why not?

19 A. Because -- well, first of all, I have
20 a confidentiality agreement with the firm. And
21 it's not something that I consider to be
22 relevant for purposes of my compensation in this
23 case, which I'm more than happy to tell you
24 every single detail that I know.

1 Q. You're a lawyer. That goes to
2 impeachment, doesn't it?

3 MR. MUEDEKING: Objection.

4 BY THE WITNESS:

5 A. You'll have to ask a judge if it goes
6 to impeachment.

7 BY MR. SCHLICHTER:

8 Q. You said maybe you've given
9 testimony, I believe, 100 times. How many cases
10 have you participated in either by providing
11 testimony or deposition or an expert report --

12 MR. MUEDEKING: Objection.

13 BY MR. SCHLICHTER:

14 Q. -- or a declaration?

15 A. Ever?

16 Q. Yes.

17 A. You mean in my entire career?

18 Q. In your entire career, yes.

19 A. I have no idea, but a large number.

20 Q. Well, can you give some idea per
21 year?

22 A. It really varied from year to year,
23 particularly the early years to the later years.
24 There were some years in the middle where I

1 didn't do hardly anything. But I've certainly
2 been involved in a lot of cases.

3 Q. Could be 1,000?

4 A. Well, let's see. I started almost
5 35 years ago giving testimony and pretty much
6 when I started at Lexecon. So doing some quick
7 arithmetic in my head.

8 I guess I would have to do
9 approximately 30 cases per year to get to 1,000.
10 And, you know, my guess is I've probably been
11 involved in -- what was the criteria? That I
12 gave testimony or that I was involved -- billed
13 even an hour? Or what was -- what was the
14 criteria of --

15 Q. Where you gave testimony, you gave a
16 declaration, you functioned as an expert witness
17 in any way.

18 A. Well, there are a lot of cases that I
19 was involved in where I never functioned as an
20 expert witness. That's the --

21 Q. All right. Well, then --

22 A. -- uncertainty I don't understand how
23 to answer.

24 Q. Then let's put it this way: How many

1 cases then, in terms of either expert testimony
2 or expert services or any kind of litigation
3 work?

4 A. Well, if you ask how many cases did I
5 ever bill time on in close to 35 years, it
6 probably would be at least 1,000.

7 Q. Could it be 1,500?

8 A. I don't know.

9 Q. Okay. At least 1,000?

10 A. Actually, as I said, I've been
11 deposed a lot and I've testified a lot, but I've
12 never been asked that question before, so I
13 really don't know.

14 Q. You've offered expert opinions on
15 quite a wide variety of cases, haven't you?

16 A. I have. Within my areas of
17 expertise.

18 Q. What do you consider your areas of
19 expertise?

20 A. Corporate finance, evaluation,
21 economics of financial markets, damages, loan
22 economics. I guess that's what I would say.

23 Probably some other areas and some of
24 the categories can encompass a number of

1 different subjects, but as a first
2 approximation, that's what I would say.

3 Q. You've offered expert opinions on
4 securities fraud, haven't you?

5 A. Yes, many times.

6 Q. About how many?

7 A. Again, I don't know, but many times.

8 Q. Hundreds?

9 A. I doubt hundreds, but I don't know.

10 Q. You've offered expert opinions on
11 insurance matters, haven't you?

12 A. Less frequently, but I have.

13 Q. How many times probably -- roughly?

14 A. Again, I don't know. Significantly
15 fewer than issues of -- involved in securities
16 fraud cases.

17 Q. Bankruptcy? Insolvency?

18 A. Yes, I've been a witness in many
19 insolvency and bankruptcy cases.

20 Q. Dozens?

21 A. Maybe dozens where the issue of
22 insolvency was involved in one way or another.

23 Q. Business plans?

24 A. Business plans to the extent that

1 they enter into evaluation analyses with, you
2 know, for example, projections that are
3 contained in business plans. But I wouldn't
4 consider myself an expert in business plans
5 per se.

6 Q. Well, you have testified as an expert
7 about business plans, for example.

8 A. I've used -- I would say I've
9 frequently used business plans as part of the
10 inputs to my analysis of valuation.

11 Q. Banking issues?

12 A. Again, I've been involved in -- as an
13 expert in a lot of cases involving banks, but
14 the term "banking issues" is a little bit too
15 big.

16 Q. How about Northeast Savings versus
17 the U.S., a federal court of claims case in
18 2010?

19 A. Yes, I've been a frequent expert
20 for -- in those court of claims cases, primarily
21 for the United States Department of Justice.

22 Q. Corporate restructuring and control
23 is another subject area that you've testified as
24 an expert on, correct?

1 A. Yes, I've been involved in a lot of
2 corporate control transaction cases as an
3 expert.

4 Q. Dozens?

5 A. Yeah, probably over my entire career,
6 probably dozens where issues of corporate
7 control were an issue.

8 Q. Finance?

9 A. Well, that's a very broad subject,
10 but I would say a high percentage of my cases
11 involve issues of finance to some extent or
12 another.

13 Q. Give us a description, if you can, of
14 your role in finance questions and finance
15 issues.

16 A. Again, there's so many -- the subject
17 matter is so broad, it's hard to do, but, you
18 know, issues of valuation, comparative
19 performance, capital structure, distribution
20 policy, corporate control transactions.

21 Q. Also --

22 A. Corporate structure. I'm involved in
23 an expert right now in corporate structure.
24 A lot of different sub areas come under the

1 rubric of the heading of finance.

2 Q. Then additionally you've testified as
3 an expert in merger matters?

4 A. Yes, many times.

5 Q. Again, any estimate on the number?

6 A. Well, you know, a lot of these
7 categories are overlapping. So, for example,
8 you just asked me about corporate control
9 transactions. Mergers are a type of corporate
10 control transaction.

11 So, you know, probably, again, dozens
12 I would say.

13 Q. Contract breach matters, that's
14 another area you've testified in?

15 A. With respect to damages particularly.

16 Q. So then you've written a number of
17 articles over the years. When is the last time
18 you wrote an article or publication?

19 A. It's on my résumé. If --

20 Q. You have it in front of you.

21 A. I can tell you I've gotten
22 sufficiently involved in the business. I really
23 have not kept up with publications the way I
24 once did.

1 C E R T I F I C A T E O F R E P O R T E R

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3 I, MICHELLE M. YOHLER, a Certified
4 Shorthand Reporter within and for the County of
5 Cook, State of Illinois, do hereby certify:

6 That previous to the commencement of
7 the examination of the witness, the witness was
8 duly sworn to testify the whole truth concerning
9 the matters herein;

10 That the foregoing deposition
11 transcript was reported stenographically by me,
12 was thereafter reduced to typewriting under my
13 personal direction and constitutes a true record
14 of the testimony given and the proceedings had;

15 That the said deposition was taken
16 before me at the time and place specified;

17 That I am not a relative or employee
18 or attorney or counsel, nor a relative or
19 employee of such attorney or counsel for any of
20 the parties hereto, nor interested directly or
21 indirectly in the outcome of this action.

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1 IN WITNESS WHEREOF, I do hereunto set
2 my hand and affix my seal of office at Chicago,
3 Illinois, this 4th day of March, 2018.

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Michelle M. Yohler

9 Michelle M. Yohler, CSR, RMR, CRR
10 Certified Shorthand Reporter
11 CSR No.: 84-4531

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